ing stables and kennels, and for the benefit of negro slaves, have been held valid. Ames Cases on Trusts, 201–204. The simple principle, believed to be legally sound, on which these later cases may be supported, is as follows. The donee takes subject to a moral obligation to carry out the testator's commands. There is no *cestui*, to be sure, and therefore properly speaking there is no trust; but if the donee is willing to act honestly, equity will not prevent him. If, however, he refuses to perform his moral duty and determines to enrich himself, the heirs or next of kin may properly ask a court of equity to declare the donee constructive trustee for them. There is a contingent constructive trust; and the beneficiaries under it, the heirs or next of kin, are presumably always ready to step forward and demand its enforcement in the contingency of the donee's not fulfilling his duty. (See an article on "The Failure of the 'Tilden Trust,'" 5 HARVARD LAW REVIEW, 389.) That the result secured by this reasoning is to be desired can hardly be questioned. Some courts have reached it by taking arbitrary distinctions, and in certain States statutes have been passed securing it.

A step in the other direction is the case of *McHugh* v. *McCole*, 78 N. W. Rep. 631 (Wis.). There the court refused to limit Lord Eldon's decision arbitrarily, and extended its principle to the case before them. They held a bequest on trust to pay for masses for the testator's soul void because there was no *cestui* to enforce it. Directly opposed to this case are *Reichenbach* v. *Quin*, 21 L. R. Ir. 138, and several American cases. *Shouler, Pet.*, 134 Mass. 426; *Seibert's App.*, 18 W. N. Cas. 276 (Pa.). The Wisconsin court acted logically if not wisely. They followed to its legitimate result a generally accepted decision, and *Morice* v. *The Bishop of Durham*, acting from a long distance, and through an interval of nearly a hundred years, accomplished a fresh injustice.

SCIENTIFIC BOOKS AS EVIDENCE. — In the case of *Western Assurance Co.* v. *J. H. Mohlman Co.*, U. S. Circ. Court of App., Second Circ., Oct. 11, 1897 (not yet reported), the Court held admissible, in support of a professional opinion, statements as to strength of timber contained in scientific books of admitted authority. This is believed to be an entirely novel point, and the ruling made ought to attract considerable notice. Judge Lacombe, in delivering the opinion of the Court, puts the reason for admitting these statements in an admirable form. "Under the rule contended for [excluding these statements] this valuable information would be available for the use of a Court of Justice so long as the men who made the tests and prepared the tabulations were living and producible, but after their death or disappearance the information they had gathered would be lost to the Court, although available for every one else in the community. . . . We feel, therefore, no hesitancy in so modifying the general rule as to hold that where the scientific work containing them is concededly recognized as a standard authority by the profession, statistics of mechanical experiments and tabulations of the results thereof may be read in evidence by an expert witness in support of his professional opinion, when such statistics and tabulations are generally relied upon by experts in the particular field of the mechanic arts with which they are concerned."

This is a step rather in the face of many *dicta* to the contrary. Although no court has ever excluded such statements in books of this

character, there has always been manifested a great unwillingness to admit in evidence scientific books of any sort. The reasons given for their exclusion are that there is no opportunity for cross-examination, that such evidence lacks the sanctity of an oath, and that it is heresay. These very potent objections, however, may well be held to be counterbalanced by the very theory of expert evidence itself. The whole theory of the admission of expert evidence is that the jury are not able to come to an intelligent verdict because there are involved in the issue some questions "of science and art" on which they need instruction from some persons expert in such matters. In a case where the needed instruction is on the strength of timber, or a kindred subject, the experts themselves are mere mouthpieces for the text-books and authorities furnished by various tests. The persons who have actually made the tests are often dead, and usually unobtainable, and the witnesses themselves have no personal knowledge on the subject. There is little or no question that the opinion of such witnesses is admissible, as they are engaged in an occupation calling every day for the solution of such problems. As a matter of practical necessity the courts are driven to admit the opinions of these architects, engineers, and builders. Such opinions being admissible, therefore, and being in large measure, if not entirely, based on statements in books on the subject, is it not unreasonable to admit the expert's opinion and exclude the statements on which such opinions are based? The question in such cases is a purely mechanical one, a question of fact, and thus differs from that where medical books, which may be said to deal rather with speculative opinion, are sought to be introduced. The books of mechanical tests seem more closely allied to annuity tables, life tables, almanacs, weather reports, and market reports, all of which have been held to be admissible, (*Vicksburg, etc. R. R. Co.* v. *Putnam*, 118 U. S. 545; *Munshower* v. *State*, 55 Md. 11; *Sisson* v. *Cleveland & Toledo R. R. Co.*, 14 Mich. 489), than to medical books, which have been excluded in most jurisdictions.

LIFE-TENANT A TRUSTEE FOR REMAINDER-MAN. — In the case of *Green* v. *Green*, 27 S. E. Rep. 952 (So. Car.), the Supreme Court of South Carolina has decided that where a tenant for life, who is under no obligation to insure, does insure her interest in the buildings, and they are subsequently burned, the insurance money is a fund held by her in trust, either to rebuild, or to take the interest for herself and leave the principal for the remainder-man. While the decisions upon this point are not unanimous, it would seem that the better reasoning is opposed to the view taken in this case. It is true that if there be a duty on the tenant to insure for the succeeding estate, or if without being under that duty he does so insure, and his act is subsequently ratified by the remainder-man, the money derived from the insurance must be devoted to rebuilding. *Welsh* v. *Ins. Co.*, 151 Pa. 607. To say, however, that in a case like the present there is a trust relation is a different matter. It may be questioned if the court were correct in its assumption that the relation of the tenant toward the property insured is that of a trustee. It is not denied that there are certain relations existing between the tenant and the remainder-man, such as the duty of the tenant not to suffer waste, which may be called fiduciary. These duties are, however, a part of the law of real property; they existed long before the doctrine of trusts arose;